

Jonathan W. Peters Finance Committee Chair Franklin Chu City Council Liaison Michael A. Genito
City Staff Liaison

David M. Mullane George Pratt Sal Samperi

Frederic Dunn
Norman MacMaster

CITY OF RYE FINANCE COM

CITY OF RYE FINANCE COMMITTEE MEMORANDUM

Date: July 12, 2004

Michael Caponiti

To: O. Paul Shew, City Manager From: City of Rye Finance Committee

Re: Recommended Amendment to City Charter Section 21-9 (Bond Resolutions)

The City's Finance Committee respectfully recommends the following amendments to section C21-9 "Bond Resolutions", paragraph D, of the City of Rye Charter; the following with underline indicating the new added text as recommended by Mr. Thomas Rothman, Esq. of Willkie Farr & Gallagher (the City's bond counsel):

The provisions of this section shall not apply to bond resolutions authorizing the issuance of bonds for the payment of judgments, or compromised or settled claims against the city, or awards or sums payable by the city pursuant to a determination by a court, or an officer, body or agency in an administrative or quasi-judicial capacity, or any capital improvement or equipment proposed to be constructed or acquired where the expense thereof, other than operation and maintenance, is to be borne by local assessment upon the several lots and parcels of land which the Council shall determine and specify to be especially benefited thereby, or capital improvements or equipment proposed to be constructed or acquired for purposes determined by resolution of the Council to be required for public safety purposes requiring urgent action in an amount not exceeding \$1,000,000 in the aggregate in any fiscal year, or capital improvements or equipment to be constructed or acquired which have been determined by resolution of the Council to be required to implement a federal, State or County of Westchester mandate failure of which to comply with could, in the judgment of the Council expressed in a resolution, result in the imposition of a fine or penalty, or authorizing the issuance of obligations to be sold to the New York State Environmental Facilities Corporation or any successor thereto.

Background

The City Comptroller, Michael Genito, previously analyzed the City's Charter bond limitations in 2002. A review was made of the charter limitations on bond resolutions of 19 New York State cities, including Rye. Excluding Rye, the charters of the remaining 18 cities revealed that 14 had no charter bonding limits and four had charter bonding limits that were significantly less onerous than Rye's. If the charter bond limitations were not in place, New York State law would allow the City Council to approve, without referendum, any and all debt of the City.

The City of Rye Charter ("Charter") section C21-9 outlines when bond referenda are mandatory, permissive (where 10% or more of the registered voters could mandate a referendum by petition), and not required. Paragraph D of section C21-9 provides for various exceptions to the above law which do not require that a referendum be held if bond proceeds are used for the payment of

various legal, administrative and quasi-judicial judgments against the City, or for obligations sold to New York State Environmental Facilities Corporation.

A limiting factor in the Charter is the requirement that aggregate funding amounts be considered when calculating the bonding limits that would trigger a permissive referendum requirement or a mandatory referendum. If aggregate funding amounts were to increase from existing levels, a situation could arise where even relatively minor purchases (e.g. the purchase of a new fire truck) could be challenged by a permissive referendum or mandate a referendum. In addition, it could be argued that the threshold amount below that which the City Council could act without being subject to the Charter is too low.

Recommendation

As stated above, Rye is one of the few cities in the State of New York that limits the authority of its local governing officials (i.e., our City Council) to issue debt that it believes is in the best interests of the community. Nonetheless, we believe that the Charter, while admittedly difficult to interpret, plays an important role in governing financial conduct, and should not be eliminated.

We do, however, recommend that various exceptions be added to the Charter to provide the City Council with the authority to respond on a timely basis to small, practical and other "common sense" funding requests without the expense and delay of the referendum process. In fact, several other municipalities have authorized exceptions that allow their respective local governments to satisfy funding requests of the types described above.

We recommend the following expenditures be excluded from the referendum requirements of the Charter if approved by the City Council, as indicated in our suggested changes to section C21-9 (D):

- Public improvements, whose cost is recovered by special assessments on the benefited properties. For example, a referendum would not be required if the debt service on bonds issued to install a sewer was repaid by special assessments against the benefited properties.
- Public safety improvements requiring urgent public action, (for example, fire, police, ambulance, building inspection), subject to a \$1,000,000 annual maximum cap.
- Funding required to comply with mandated Federal, State or County laws the failure of which would result in a fine or penalty.

Respectfully submitted,

- City of Rye Finance Committee